



Engineering Department

DATE: April 4, 2022
FROM: Gabe Schell, City Engineer
ITEM: Development Agreement – Blue Water Development, LLC

REQUEST:

Consider approval of Development Agreement with Blue Water Development, LLC

Please place this item on the April 12, 2022 City Commission meeting agenda.

BACKGROUND INFORMATION:

Blue Water Development, LLC is constructing a single parcel development in south Bismarck on the north side of Airway Avenue approximately 800 feet west of the 26th Street/Airway Avenue intersection. There is approximately 6,000 feet of Airway Avenue that is currently constructed as a ditch section roadway, of which approximately 525 feet is adjacent to the Blue Water Development site. See attached Exhibit 1.

The City of Bismarck development policy would require that Airway Avenue adjacent to the Blue Water Development site be constructed to the current City standard as part of this development. However, without adequate petitions for the remainder of Airway Avenue, the reconstruction could not take place at this time.

This development agreement, along with a companion petition for street improvements, allows the developer to forego the improvement of Airway Avenue at this time until such time that the City receives additional petitions from other properties adjacent to the unimproved Airway Avenue.

RECOMMENDED CITY COMMISSION ACTION:

Approve the Development Agreement with Blue Water Development, LLC.

STAFF CONTACT INFORMATION:

Gabe Schell, PE | City Engineer, 355-1505 or gschell@bismarcknd.gov

Above this line used for recordation purposes only.

DEVELOPMENT AGREEMENT

The City of Bismarck (the "City") and Blue Water Development, LLC (the "Owner") make this Development Agreement with regard to the development of a parcel (the Parcel) located in Bismarck, North Dakota and described as follows:

Lot 3, Block 1 Airway Avenue Addition to the City of Bismarck, Burleigh County, North Dakota

The Owner desires to develop this Parcel for commercial use. The parcel is located north of Airway Avenue and west of South 26th Street. The city would normally require the improvement of Airway Avenue adjacent to the parcels which are accessed by the private drive prior to development of any parcel accessed by the private drive. The parties are in agreement that the improvement of Airway Avenue adjacent to the parcel is not necessary for the further development of the site at this time and can be delayed until such time as the City receives a petition to improve Airway Avenue from any parcel located on Airway Avenue between Airport Road and Northern Plains Drive adjacent the parcels which are accessed by the private drive prior to development of any parcel accessed by the private drive.

In exchange for the City's agreement to delay the requirement of the improvement of Airway Avenue between Airport Road and Northern Plains Drive, the parties agree as follows:

1. The City will approve the site plan and issue building permits in its normal course of business. Prior to such approvals or permits being issued, the Owner will execute and deliver a petition for the improvement of Airway Avenue for that portion adjacent to the Parcel. The petition will be conditioned that it will be deemed to be submitted upon the receipt of another valid petition for improvement of any portion of Airway Avenue between Airport Road and Northern Plains Drive. By entering into this Agreement, the Owner also agrees to waive their right to protest a special assessment district formed to improve Airway Avenue that includes the roadway between Airport Road and Northern Plains Drive. This agreement will be placed of record in the title for the Parcel, and all successors in interest agree to waive their right to protest the special assessment district under N.D.C.C. Ch 40-22 by accepting

delivery of title. The City also agrees that in order to activate the petition, any project for the improvement of Airway Avenue between Airport Road and Northern Plains Drive must include the entire width of the roadway.

2. It is the intention of the parties that this Agreement will run with the land as to the parcels within the plat and that the Owner will have the obligation to inform any successor in interest of the terms of this Agreement and the successor's obligation to abide by this Agreement and include compliance with this Agreement as a condition in any written instrument of conveyance of real property for the site.
3. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered this agreement.

This Agreement shall bind the parties, their successors, assigns and heirs.

Dated this 1st day of April, 2022

Keighly Johnson

BlueWater Development, LLC
Keighly Johnson
Managing Member

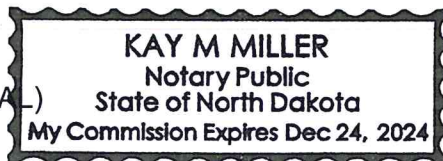
STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

On this 1st day of April, 2022, before me personally appeared Keighly Johnson, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

Kay M. Miller

Notary Public
State of North Dakota

(SEAL)



Dated this _____ day of _____, 2022

Steve Bakken
President, Board of City Commissioners

Attest: _____

Keith J. Hunke
City Administrator

[illegible]

On this _____ day of _____, 2022, before me personally appeared Steve Bakken and Keith Hunke, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public
State of North Dakota

(SEAL)

PETITION FOR PERMANENT STREET IMPROVEMENT

DATE: 4-1-22

To the Honorable Board of City Commissioners
Bismarck, North Dakota
Commissioners:

The undersigned owners of the property liable to be assessed for the improvement respectfully petition your Honorable Board to have permanent street improvements completed on:

Airway Avenue – from Airport Road and Northern Plains Drive

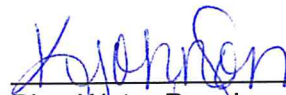
It is agreed that the necessary permanent street improvements be completed following the installation of the necessary water and sewer service line stubouts by the abutting property owner(s) and that 100% of the paving cost of said permanent street improvements be assessed to or other funding arrangements made by the benefitted property according to the Current Development Costs Policy. For parcels not zoned residential, 40% of the permanent street improvement cost will be prepaid by the benefitted petitioned property. It is agreed that 100% of any temporary street improvements shall be prepaid by the benefitted petitioned property.

PROPERTY DESCRIPTION

Lot 3, Block 1 Airway Avenue Addition

SIGNATURE

(Property Owner/s)



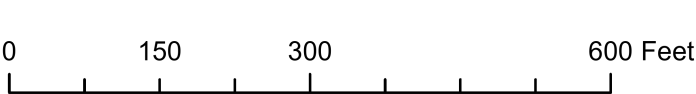
Blue Water Development, LLC
Keighly Johnson
Managing Member

For City Engineer Use Only

Approved by Gabe J. Schell, PE
City Engineer, Bismarck, ND

Date

Exhibit 1 - Location Map



Bismarck-Mandan MPO, Maxar, Esri Community Maps Contributors, City of Bismarck, State of North Dakota, © OpenStreetMap, Microsoft, Esri Canada, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

